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Counterclaimants and Fourth Party Plaintiffs
DACA-Castaic, LLC and Debt Acquisition
Company of America V, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE RICHARD AND SHEILA J.
McKNIGHT 2000 FAMILY TRUST,
Richard McKnight, Trustee

Plaintiff

v.

WILLIAM J. BARKETT, an individual,
CASTAIC III PARTNERS, LLC
a California limited liability company

Defendants

Case No. 2:10-cv-01617-RCJ

JUDGMENT

AND RELATED INTERVENOR ACTIONS,
THIRD PARTY ACTIONS AND
COUNTERCLAIMS

On December 18, 2014, a hearing was held on the Motion of Third Party Defendants, Counterclaimants and Fourth Party Plaintiffs Debt Acquisition Company of America V, LLC ("DACA V") and DACA-Castaic, LLC (collectively, "DACA") for: (i) summary judgment on DACA's Supplemental Counterclaim (included as pages 35 through 39 of DACA's consolidated pleading filed March 25, 2013 as ECF No. 231 the "DACA Consolidated Pleading"); (ii) summary

judgment on DACA's Fourth Party Complaint (included as pages 40 through 43 of the DACA Consolidated Pleading); (iii) Defensive Summary Judgment on the Counterclaim of Castaic Partners, LLC, Castaic Partners II, LLC, Castaic Partners III, LLC, and William Barkett (collectively, the "Barkett Parties") filed January 13, 2012 as ECF Nos. 156 & 157; and (iv) entry of final judgment as to all claims for relief as to which DACA is a party. Appearances were as noted on the record.

The Court having previously: (i) granted in part DACA's motion (ECF No. 137) for summary adjudication of certain issues as part of its Order entered March 14, 2012 as ECF No. 170; and (ii) having granted in part DACA's motion (ECF No. 286) for default judgment on DACA's Counterclaim (included as pages 12 through 34 of the DACA Consolidated Pleading) and for defensive summary judgment on certain claims for relief stated in the Barkett Parties' Counterclaim, all as part of its Order entered December 11, 2013 as ECF No. 317; and

The Court having considered the moving and opposition papers and the record in this action, and the argument of counsel, the Court grants the above-referenced motions and enters judgment as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Default judgment is entered on Counterclaim of DACA as against the Barkett Parties (included as pages 12 through 34 of the DACA Consolidated Pleading), by granting declaratory relief as follows:

1.1 The loan (the "Tapia Ranch Loan") evidenced by that certain "Promissory Note Secured by Deed of Trust" in the original principal amount of \$18,500,000.00, executed by Castaic Partners, LLC as Borrower (the "Tapia Ranch Note") and secured (until completion of the foreclosure sale referred to below) by that certain "Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing," recorded October 8, 2004 as Document No. 2004-2598922 of the Official Records of Los Angeles County, California¹ as amended by that certain "First Amendment to Deed of Trust" recorded January 27, 2005 as Document No. 2005-0196543 and by that certain "Second Amendment to Deed of Trust"

¹ All references to recorded documents in this Judgment refer to the Official Records of the County of Los Angeles, California.

1 recorded on May 25, 2005 as Document No. 2005-1224588, and by that certain “Third
2 Amendment to Deed of Trust’ recorded on June 29, 2005 as Document No. 2005-1530395,
3 and by that certain “Fourth Amendment to Deed of Trust” recorded on September 14, 2005
4 as Document No. 2005-2210065, and by that certain “Fifth Amendment to Deed of Trust”
5 recorded on January 6 2006 as Document No. 2006-0034507 (as amended, the “Tapia Ranch
6 Trust Deed”) is in default. The amount owing under the Tapia Ranch Note, after deducting
7 the credit bid or \$2,000,000.00 made at the foreclosure sale conducted November 13, 2012,
8 is \$98,760,338.22 as of November 1, 2013 and shall increase by an additional \$54,866.85
9 per diem thereafter until the date of entry of this Judgment.

10 1.2 The Tapia Ranch Note is to be interpreted and enforced under Nevada law
11 and is valid and enforceable according to its terms.

12 1.3 The loan (the “Castaic II Loan”) evidenced by that certain “Promissory Note
13 Secured by Deed of Trust” in the original principal amount of \$5,600,000.00, executed by
14 Castaic Partners II, LLC as Borrower (the “Castaic II Note”) and secured (until completion
15 of the foreclosure sale referred to below) by that certain “Deed of Trust, Security Agreement,
16 Assignment of Rents and Fixture Filing” recorded July 26, 2005 as Document No. 05-
17 1761534 as amended by that certain “First Amendment to Deed of Trust” recorded February
18 13, 2006 as Document No. 06-244761 (as amended, the “Castaic II Trust Deed”) is in
19 default. The amount owing under the Castaic II Note, after deducting the credit bid of
20 \$500,000.00 made at the foreclosure sale is \$23,801,458.04 as of November 1, 2013 and
21 shall increase by an additional \$13,223.03 per diem thereafter until the date of entry of this
22 Judgment.

23 1.4 The Castaic II Note is to be interpreted and enforced under Nevada law and is
24 valid and enforceable according to its terms.

25 1.5 The loan (the “Castaic III Loan”) evidenced by that certain “Promissory Note
26 Secured by Deed of Trust” in the original principal amount of \$4,500,000.00, executed by
27 Castaic Partners III, LLC as Borrower (the “Castaic III Note”) and secured by that certain
28 “Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing” recorded

1 October 12, 2005 as Document No. 05-2452902 as amended by that certain “First
2 Amendment to Deed of Trust” recorded February 28, 2006 as Document No. 06-0431297 (as
3 amended, the “Castaic III Trust Deed”) is in default. The amount owing under the Castaic III
4 Note is \$ 21,004,165.34 as of November 1, 2013 and shall increase by an additional
5 \$11,668.98 per diem thereafter until the date of entry of this Judgment.

6 1.6 Until completion of the foreclosure sale referred to below, the Tapia Ranch
7 Trust Deed was a lien on the property described therein which secured all obligations owing
8 under the Tapia Ranch Note, and the Tapia Ranch Trust Deed was valid and enforceable
9 according to its terms.

10 1.7 Until completion of the foreclosure sale referred to below, the Castaic II Trust
11 Deed was a lien on the property described therein which secured all obligations owing under
12 the Castaic II Note, and the Castaic II Trust Deed was valid and enforceable according to its
13 terms.

14 1.8 The Castaic III Trust Deed is a lien on the property described therein which
15 secures all obligations owing under the Castaic III Note, and the Castaic III Trust Deed is
16 valid and enforceable according to its terms.

17 1.9 A majority in interest of the beneficiaries of the Tapia Ranch Trust Deed (the
18 “Tapia Ranch Direct Lenders”) voted to authorize Cross FLS, LLC (“Cross”) to enter into
19 the “Agreement to Purchase Loan Interests” with DACA dated as of March 7, 2011 (the
20 “Purchase Agreement”).

21 1.10 A majority in interest of the beneficiaries of the Castaic II Loan (the “Castaic
22 II Direct Lenders”) voted to authorize Cross to enter into the Purchase Agreement.

23 1.11 A majority in interest of the beneficiaries of the Castaic III Loan (the “Castaic
24 III Direct Lenders”) voted to authorize Cross to enter into the Purchase Agreement.

25 1.12 Cross was duly and legally authorized pursuant to NRS ch. 645B to execute
26 the Purchase Agreement and the Exhibits thereto, and is and continues to be duly and legally
27 authorized to execute all subsidiary documents and take all actions necessary to carry out the
28 intent of the Purchase Agreement.

1.13 Pursuant to the Assignment of Deed of Trust executed by Cross pursuant to the Purchase Agreement, DACA-Castaic, LLC is now the sole beneficiary of record under the Tapia Ranch Trust Deed.

1.14 Pursuant to the Assignment of Deed of Trust executed by Cross pursuant to the Purchase Agreement, DACA-Castaic, LLC is now the sole beneficiary of record under the Castaic II Trust Deed.

1.15 Pursuant to the Assignment of Deed of Trust executed by Cross pursuant to the Purchase Agreement, DACA-Castaic, LLC is now the sole beneficiary of record under the Castaic III Trust Deed.

1.16 That certain Notice of Default and Election to Sell Under Deed of Trust, recorded October 23, 2007 as Document No. 2007-2398356 (the "Tapia Ranch NOD") was duly and properly authorized, recorded and mailed as required under California law, and valid nonjudicial foreclosure proceedings under the Tapia Ranch Trust Deed were thereby commenced. Such foreclosure proceedings were subject to continuation at a later time by the recording, posting, publication and mailing of a Notice of Trustee's Sale.

1.17 That certain "Notice of Default and Election to Sell Under Deed of Trust" recorded October 15, 2007 as Document No. 2007-2398358 (the "Castaic II NOD") was duly and properly authorized, recorded and mailed as required under California law, and valid nonjudicial foreclosure proceedings under the Castaic II Trust Deed were thereby commenced. Such foreclosure proceedings were subject to continuation at a later time by the recording, posting, publication and mailing of a Notice of Trustee's Sale.

1.18 DACA-Castaic, LLC, as the sole beneficiary of record under the Tapia Ranch Trust Deed, the Castaic II Trust Deed, and the Castaic III Trust Deed, DACA-Castaic, LLC, retains a fiduciary duty to the Direct Lenders to perform the obligations of DACA-Castaic, LLC under the Purchase Agreement and ultimately to distribute the proceeds of the loans to the Direct Lenders under the terms provided for in the Purchase Agreement.

1.19 The assignment of the Castaic Notes and Trust Deeds necessarily included, by operation of law, and assignment of rights under any guarantees of the obligations under

1 those Notes. Accordingly, DACA is the real party in interest with respect to any claims based
2 on those guarantees.

3 2. As to the Supplemental Counterclaim of DACA against the Barkett Parties, and on
4 the Fourth Party Complaint of DACA as against Merjan Financial, LLC (“Merjan”) Pond Avenue
5 Partners, LLC (“Pond Ave. Partners”) and Palisades Capital NV, LLC (“Palisades”) (collectively,
6 the “Fourth Party Defendants”), the Court grants declaratory relief as follows:

7 2.1 Nonjudicial foreclosure proceedings under the Tapia Ranch Trust Deed were
8 completed in accordance with the requirements of applicable law, and the trustee’s sale
9 which occurred on November 13, 2012, as evidenced by the “Trustee’s Deed Upon Sale”
10 recorded November 15, 2012 as Document No. 2012-1733548 (the “Tapia Ranch Trustee’s
11 Deed”) was valid.

12 2.2 Neither the Barkett Parties nor the Fourth Party Defendants, or any of them,
13 have the right to rescind or set aside the foreclosure of the Tapia Ranch Trust Deed.

14 2.3 Nonjudicial foreclosure proceedings under the Castaic II Trust Deed were
15 completed in accordance with the requirements of applicable law, and the trustee’s sale
16 which occurred on November 16, 2012, as evidenced by the “Trustee’s Deed Upon Sale”
17 recorded November 20, 2012 as Document No. 2012-1767387 (the “Castaic II Trustee’s
18 Deed”) was valid..

19 2.4 Neither the Barkett Parties nor the Fourth Party Defendants, or any of them,
20 have the right to rescind or set aside the foreclosure of the Castaic II Trust Deed.

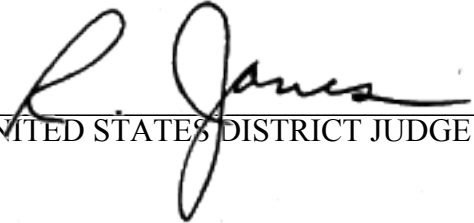
21 2.5 Neither the Barkett Parties, nor Merjan, nor Palisades own any Direct Lender
22 interest in any of the Castaic Loans. The Court makes no finding as to any interest claimed
23 by Pond Avenue Partners, LLC.

24 3. Judgment is entered in favor of DACA as to the Third Party Complaint filed on
25 behalf of the Barkett Parties on January 13, 2012 (D.I. 156 & 157), and the Barkett Parties shall
26 take nothing by way of that Third Party Complaint.

27 4. The pleading entitled Fifth Party Counterclaim set forth in the consolidated pleading
28 filed on behalf of the Barkett Parties on April 19, 2013 (D.I. 247) having been stricken by this

1 Court's Order entered December 11, 2013 (ECF No. 317 p. 7 ln. 25 – p. 8 ln. 5), the Barkett Parties
2 shall take nothing by way of that "Fifth Party Counterclaim."

3
4 DATE: January 29, 2015


UNITED STATES DISTRICT JUDGE

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6 PREPARED AND SUBMITTED BY:

7 KIRBY & McGUINN, A P.C.

8
9 By: /s/ Dean T. Kirby, Jr.
Dean T. Kirby, Jr.
10 Attorneys for Third Party Defendants
and Counterclaimants and Fourth Party Plaintiffs
11 DACA-Castaic, LLC and
Debt Acquisition Company of America V, LLC
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